CIVIL SERVICE PROVISIONS IN COMMISSION CHARTERS

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The merit system of appointment to the public service is one of those checks upon abuse of power which, together with the initiative, the referendum and the recall, have been frequently associated with the commission form of municipal government. It must be said, however, that none of these checks was incorporated in the commission plan as first instituted in Galveston in 1901. The Galveston experiment and, in fact, the commission plan in its essential features, is based upon the theory of concentration of all the functions of municipal government in the hands of a small body. In its more recent development, there has been an attempt to popularize the system, arising on the one hand out of a desire to make commission government conform to democratic principles without sacrificing the added efficiency gained through concentration, and, on the other, out of fear of the abuse of power. The Des Moines plan was the first to incorporate the initiative, the referendum, the recall and the merit system. It is largely due to the prominence which this plan has attained that these features have come to be associated with commission government.

The adoption of the merit system in commission charters has not been as general, however, as is commonly supposed. Only seven of the eighteen states that have passed laws providing for commission government, have made provision for the incorporation of the merit system. Of these seven, Illinois and New Jersey had, before the passage of the commission government laws, separate civil service acts, which become operative in any city, regardless of the form of government, upon a popular vote in favor thereof. Of the 138 cities which in June, 1911, were governed on the commission plan under general state laws or special charters, but forty-one, or less than one-third, have any civil service provisions. Of these, the four commission cities in Massachusetts are covered by a separate

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state civil service law, which is mandatory for all cities in the state; and two in Illinois have availed themselves of the option of adopting the provisions of the civil service law for their local services.

The omission from the charters of over two-thirds of the commission cities of definite provisions intended to prevent the perversion of the public service to the ends of the discredited spoils system appears to be due mainly to absolute confidence in the effective operation of a sense of official responsibility which will come from the searching scrutiny which the people under the new system are expected to give to all the acts of their commission. There is, however, grave reason to doubt the justification of this confidence, in view of the lessons of experience and the opportunities which the concentration of powers in a few hands give for the development of the spoils system. These opportunities are so great, and the inherent difficulty in the way of the people exercising an actual supervision over the use of the appointing power throughout the entire city service is so well-nigh impossible, as to justify the statement that stringent civil service provisions embodied in the charter itself are more important in the commission plan than in the older forms of municipal government.

The purposes of a civil service law are briefly two; first, to prevent the use of the power of appointment to build up a political party or machine through the distribution of places in the public service as rewards to party workers, and, second, to provide the machinery whereby candidates for public employment may be selected for the positions where their services are needed on a basis of merit and fitness, tested, so far as is practicable, by competitive examination. The reform which this system of appointment accomplishes is fundamental to any efficient, economical, and business-like administration of public affairs. It is directed at a system which has been the main cause of waste, inefficiency and scandal in national, state, and municipal administration. The spoils system is the foundation of the power of the political boss. Control of the power of appointment and removal is the first hold which the political worker, aspiring to party control, tries to obtain on the machinery of government. Unless adequate restrictions are placed upon the power of appointment to prevent its abuse for purposes of patronage, a vital safeguard is neglected.

Experience has clearly shown that provision for the merit

system in the form of a stringent civil service law is the only guarantee that can be relied upon to prevent the abuses arising out of the spoils system. The belief that the people can or will hold administrative officers responsible for the manner in which they fill subordinate positions, is a denial of actual experience to the contrary. Under any form of government the appointments to subordinate positions are matters of administrative detail, of which the people are commonly ignorant and to which they cannot, in the nature of things, give careful attention. If, however, the principle that merit and fitness alone shall rule in all appointments and promotions is embodied in the governing law of the community, any violation of the letter or the spirit of that law raises an issue which is clear and concrete. This makes possible the holding of the offender responsible therefor at the polls.

That a civil service law is peculiarly important in commission government, is evident if the unusual opportunities which control of highly centralized machinery gives to those possessing the power of appointment and removal be kept in mind. It is undoubtedly true that the increased public interest in city affairs, which the commission plan may be counted on to arouse, will make the way of the political worker harder and that the elimination of national party politics will be of distinct advantage. But local political machines are no more necessarily based on principles of public policy than are those of the large parties in their interference in city politics; the motives of private gain at public expense are equally powerful with all leaders to whom politics is the trade by which they make their living, and it is chimerical to hope that such evil influences in public affairs will disappear overnight with a change, or any number of changes, in the form of government. The rare chance which control of a city commission endowed with such unusual powers offers for the building up of a political machine, even though the abuse of these powers is checked by the initiative, referendum and recall, makes neglect to provide a safeguard against this danger peculiarly serious. The initiative and referendum deal only with legislation; the recall cannot be made an effective check upon the abuse of patronage, because of the inability of the people to exercise sufficient scrutiny over a large number of minor appointments made in the course of administrative duty. The only secure defence against the spoils system is definite provision in the charter

itself for placing appointments to the city service on the basis of merit and fitness alone.

If the importance of providing for the merit system as a factor in obtaining a satisfactory degree of efficiency in the public service, and as a vital safeguard against the spoils system be conceded, the necessity of making such provision adequate is self-evident. An examination, however, of the civil service provisions that have been adopted in commission charters, shows that, with one or two possible exceptions, these provisions are not sufficiently strict or comprehensive to accomplish their purpose in the event of a city council's being averse to them. Experience with the operation of civil service laws shows that, if the law is to accomplish results in city administration, it must observe certain essential principles. Primarily, the provision for the merit system must be inserted in the charter with sufficient directness and detail to raise the enforcement of the law above the mere whims and prejudices of politically elected and constantly changing city administrations. To leave the question of its effective operation solely or largely to the discretion of the officers whom it is expected to regulate in their exercise of the power of appointment, is, on its face, an anomaly. Failure to recognize this basic fact in most of the civil service laws so far enacted for commission cities, constitutes the main difficulty in the way of a proper administration of the system. If the city council can control the civil service commission, either through the power to appoint and remove the members at will, or by limiting their activity through ordinances or rules, it is obvious that the civil service commission cannot act as an effective restraint upon the council in its exercise of the power of appointment.

Of the means whereby these difficulties may be obviated, the most effective and successful have been state control, as in Massachusetts, or state supervision, as in New York. In these two states, the merit system has been embodied in law as a general public policy for the services of the state and its civil divisions. In New York it has been inserted in the constitution itself. In Massachusetts there is but one civil service commission, appointed by the governor, and exercising jurisdiction in the state and city services alike. Each city in New York has its separate municipal civil service commission, appointed by the mayor, but in all they do they are subject to the supervision and approval of the state civil service commission.

Both the Massachusetts and the New York system have operated to minimize the influence of local politics in the administration of the law in the city service. Where, however, as in the majority of cases, civil service legislation is purely local in its application, and state supervision or state control cannot be regarded as anything more than a later goal to be attained, it is necessary to lay down certain principles as fundamental in order to secure a proper enforcement of the merit system in city administration. These are four in number:

1. In the charter itself should be inserted all the provisions which are essential to the proper administration of the merit system.

2. Civil service commissioners should be appointed for terms which overlap, so arranged that no one city administration will have the power to replace all the commissioners, and that the city will, at all times, have the services of men who have had practical experience with the administration of the law.

3. The tenure of commissioners should be sufficiently secure to prevent control of the commission's action through the exercise by the mayor or the council of an arbitrary power of removal. Removal should be made only upon stated charges after a hearing, but it is not necessary and, from other points of view, it is undesirable, that the removed commissioner should be given the right of appeal to the courts.

4. Upon the civil service commission alone should be placed the duty and responsibility of drafting the rules in accordance with which the law is administered. To permit the mayor or council to draft the rules or to exercise a power of approval over the rules as drafted by the civil service commission, is to make the effectiveness of the civil service law depend entirely upon the attitude of these officials toward it.

The strongest civil service charter provisions for commission cities are those of Oakland, California, and Oklahoma City, Oklahoma. In Oakland, the civil service commission is removable only for cause and after a hearing. In both cities overlapping terms for the commissioners are established, and the rules are made and put into force by the action of the civil service commission alone. Both charters, however, leave something to be desired in their provisions as to what the rules shall contain. Of other commission charters, the best drawn civil service provisions are contained in the Iowa law

of 1907, applicable to first-class cities. These have been copied in the Kansas act for first-class cities, and in the Montana law. The Iowa law makes the appointment of a civil service commission for overlapping terms of six years mandatory upon the city council. It provides for removal, for cause, of any commissioner, by a four-fifths vote of the council, for the holding of examinations for the filling of all except certain specified positions in all departments of the city government, for the certification of twice as many names from the eligible list as there are vacancies to be filled, for the making of rules by the council, and for removal of employees by a majority vote of the council. Aside from these requirements and the declaration that appointments shall be without regard to political or religious beliefs, the charter makes no other provision for the administration of the merit system save that the council "may prescribe such rules and regulations for the proper conduct of the business of said commissioners as shall be found expedient and advisable, including restrictions on appointment, promotion, removal for cause, roster of employees, certification of records to the auditor and restrictions on payment of salaries to persons improperly employed." In other words, where the charter itself should contain a careful statement of what the rules should provide, in the Iowa law and those others which have been modeled upon it, the effectiveness of the rules is left to depend almost entirely on the discretion of the officers whom these rules are intended to restrain.

Compared with the civil service sections of some other commission charters, however, the Iowa law is iron-clad. Port Arthur, Texas, for example, has a charter empowering the city council itself to act as the civil service commission and "to adopt civil service regulations to govern" appointments to any or all positions in any or all departments. In Huntington, West Virginia, the council is required to act as a civil service commission for the purpose of holding non-competitive examinations for appointments in the police and fire departments and in the office of the cemetery sexton. Modesto, Monterey, and Berkeley, California, all have in their charters, recently adopted, a clause empowering, but not requiring, the city council to appoint a civil service commission to serve without compensation for indefinite terms. The charter of Colorado Springs, Colorado, goes somewhat further in its civil service provisions in that the appointment of a civil service commission is mandatory

and the commissioners are appointed for overlapping terms. The application of the law, however, is limited to the department of public safety and the department of public works, unless extended by ordinance of the council.

Such is the general character of civil service legislation for commission cities. Turning now to specific features of the civil service sections of commission charters, it is to be noted that where the appointment of the civil service commission is mandatory the terms of the commissioners are invariably made to overlap and are usually for six years. In only one case—that of the charter for Oakland, California—is there a specific provision for a hearing before removal. A four-fifths vote of the council, however, is generally required. In only two cases—Oakland and Oklahoma City—are the rules made by the civil service commission alone; in all other commission cities either the approval of the city council is required for the rules drafted by the civil service commission, or the rules are made in the form of an ordinance. In a number of cases, the civil service provisions apply to part of the city service, usually the police and fire departments; their extension to other departments being left to the discretion of the council.

In general, it is apparent that the weaknesses of much of the earlier civil service legislation for cities has been perpetuated in commission charters and frequently exaggerated. The dangers arising out of the inadequacy of the civil service provisions are not imaginary; the actual operation of the Iowa law in Des Moines and Cedar Rapids has been attended with constant friction over the administration of the civil service sections of the charter. As stated, the Iowa law leaves the determination of the final form of the civil service rules with the council itself. Either through error or design, the councils in Des Moines and Cedar Rapids, in adopting the rules, have not obeyed even the plain provisions of the charter. The rules in Des Moines, instead of providing for the certification of twice as many names of eligibles as there are vacancies to be filled call for the certification of five names for each vacancy. In Cedar Rapids, the rules provide for the certification of three names for each vacancy. Both in Des Moines and Cedar Rapids there has been an unwarranted extension of the number of positions excepted from competitive examination. The law exempts commissioners of any kind, unskilled laborers, election officials, the mayor's secretary, the

assistant solicitor and all officers *specifically* named in Section 8 of the charter. These are the only positions which the law authorizes to be made exempt. The rules adopted by the council in Des Moines, however, make considerable additions to this list of excepted places, including assistant superintendents in the departments of streets and public improvements, and parks and public property, and "any officer or assistant who is by law or ordinance to be elected or appointed by the council." Inasmuch as the charter places the power of election or appointment in the hands of the council, this last phrase permits the exemption of any officer or assistant. In Cedar Rapids, also, the rules provide for a similar unwarranted extension of the number of positions exempt from competitive examination.

These open violations of the plain intent of the law where the council is given the power to determine how stringent shall be the restriction upon their exercise of the appointing function, are illustrations of what faulty draft of civil service laws may easily lead to. Such instances are perhaps too flagrant to be of frequent occurrence, but there is sufficient danger from less open violation to make it distinctly worth while to guard against it. Indeed, experience has shown that it is from the constant and repeated small violations of the spirit, if not the letter, of the law, that the undermining of the merit system is to be feared. Unless provisions for the establishment of the competitive system of appointment are definitely laid down in the charter itself, and unless those provisions are adequate to secure the enforcement of the law, independent of partisan influences, the danger of the revival of the spoils system, stronger than ever in its control of the highly centralized machinery of commission government, will become pressing as soon as the watchfulness and interest of citizens begin to relax.